

ST 03-0002-PLR 01/14/2003 EXEMPT ORGANIZATIONS

A hospital that qualifies as a charitable institution is not taxable when selling drugs to anyone because this is for the relief of the sick and so is "primarily for the purpose of" such hospitals. See 86 Ill. Adm. Code 130.2005(b)(1)(B). (This is a PLR).

January 14, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letters of May 23, 2002 and July 24, 2002. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of our client, Company, FIRM is requesting a private letter ruling regarding Illinois treatment of sales/use tax law as it relates to the following facts. As required by Illinois Administrative Code Section 1200.110 Private Letter Rulings, we are submitting the following information. We have enclosed a Power of Attorney, authorizing us to correspond with you regarding this request.

History and Facts

Company, a tax-exempt 501(c)(3) hospital, has a valid Illinois sales tax exemption number. Company operates an outpatient pharmacy located inside the hospital. It is a department of the tax-exempt hospital. The outpatient pharmacy operates under the hospital's federal and state tax identification numbers.

The outpatient pharmacy was created in order to provide pharmaceuticals or drugs to Company's nursing home patients, assisted-living patients, and unassisted living patients. The nursing home patients, assisted-living patients, and unassisted living patients are residents within the Company complex. In addition to providing pharmaceuticals to the residents, the outpatient pharmacy provides retail pharmaceutical sales to the general public.

The Company maintains separate inventories for the inpatient and outpatient pharmacies. The outpatient pharmacy provides approximately 33% of its sales to the residents within the complex, and 67% of its sales to the general public. The outpatient

pharmacy accounts for its sales between the retail sales and those sales made to the residents within the complex at the nursing home, assisted-living and unassisted living areas.

The outpatient pharmacy currently charges Illinois retail sales tax on the sales made to the general public (walk in or after visit), and the residents within the complex at the nursing home, assisted-living and unassisted living areas.

Questions

1. Are the outpatient pharmaceutical sales exempt when sold to nursing home, assisted-living, and unassisted living residents?
2. Are the outpatient pharmaceutical sales exempt when:
 - A. Sold to the general public that did not receive hospital care (walk in)?
 - B. Sold to the general public after a hospital visit?

Basis of Law

We base our following opinions on 86 Ill. Admin. Code 130.2005(b)(1) *Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated as Businesses, and Suppliers of Such Persons.*

(b) *Rules Governing Some Special Kinds of Selling by Exclusively Charitable and Religious Organizations*

(1) *Hospital Sales*

(A) *Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital service to them, nor on the operation of restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. However, sales made in a hospital cafeteria which is open to the public will be taxable sales.*

(B) In the case of hospitals which qualify as charitable institutions, such hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is 'primarily for the purpose of' such hospitals, thus qualifying such transactions for tax exemption. However, a hospital or hospital auxiliary incurs Retailers' Occupation Tax liability when selling candy, chewing gum, tobacco products, razor blades and the like at retail even when such items are sold only to patients because (unlike food and medicine) these items are not necessary to the furnishing of hospital service, and they are competitive. (Emphasis added in bold)

(C) *The same distinctions apply to nonprofit sanitarium and nonprofit nursing homes when they qualify as exclusively charitable institutions.*

Based upon the above information and our extensive research of Illinois law and regulations, it is our opinion the pharmaceutical sales to nursing home, assisted-living

and unassisted living patients, as residents of the Company, are non-taxable retail sales. It is also our opinion based on the above Illinois regulation that sales to the general public by the outpatient pharmacy are also tax exempt. The Company's primary purpose is to provide relief to the sick for both the pharmaceutical sales for the residents and the general public.

We could not locate contradictory cases or previous letter rulings addressing a similar set of facts as established in this request. To the best of our knowledge, the Illinois Department of Revenue has not previously ruled on the same or similar issue for the Company, and no previous letter ruling has been requested for the Company regarding this issue. There is currently no audit or pending litigation with the Illinois Department of Revenue.

Conclusion

Based on the above research and Illinois regulation 86 Ill. Admin. Code 130.2005(b)(1), it appears that the retail sales by the outpatient pharmacy to nursing home, assisted-living, and unassisted living residents, and to the general public should be tax exempt.

Thank you in advance for your assistance in this matter. If you have any questions regarding the information provided, please contact me.

We agree that a hospital that qualifies as a charitable institution and has been issued a tax exemption identification number by the Department is not taxable when selling drugs to anyone. 86 Ill. Adm. Code 130.2005(b)(1)(B) provides that such activity is for the relief of the sick and "primarily for the purpose of" such hospitals. You have indicated that COMPANY is a qualified charitable hospital that has obtained an exemption identification number from the Department. This being the case, it is the Department's position that all sales of drugs made by the COMPANY pharmacy are exempt from sales tax. For a definition of drugs, see 86 Ill. Adm. Code 130.310(c)(1).

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.